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Proceedings Medical Jurisprudence Society of Philadelphia

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BY

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READ FEBRUARY 12TH 1889

presented by the author.

Published by the Society





A SINGULAR CASE OF MISTAKEN IDENTITY.

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PASCHAL H. COGGINS, Esq.

The subject of "mistaken identity" has been so frequently presented to the public in the fantastic garb bestowed upon it by the novelist, that I realize how commonplace my own presentation of it must appear by comparison. The man who can draw without limitation upon his imagination for his facts in a matter of this kind, possesses an advantage which can hardly be over-estimated. If, however, I may be a little oracular by way of self justification, I would remark that, while the sea serpent is a much more interesting creature than the eel, the eel nevertheless makes the better pie. There is certainly nothing very startling in the case which forms the subject of my paper this evening, but there were a number of facts developed in its investigation, which seem to me to possess a reasonable degree of interest for both of our professions. The failure of the human faculties to properly and accurately perform their several functions in the effort at identification is certainly the subject for study by the physiologist and physician. If it is suggested that it only belongs to the medical profession in the same way that other questions of mistaken testimony come within that field, I might reply that the whole question of human testimony belongs as fully to the physician as to the lawyer. The great number of mistakes that are made by witnesses in courts of justice are the results of existing imperfections in the average human mind, or in its use. These imperfections may sometimes be analyzed, and mitigated or removed by aid of medical knowledge, but human legislation alone can never

suppress them. Every act is marked by the physical and mental condition of the actor, and where the act is plainly recorded, we may hope to learn from the manner of the performance something of the circumstances of its author. Take the examination of chirography as an aid to identification. The feature of handwriting which is of value to the expert is not, ordinarily, the idea which the writer intended to express by his combination of letters, but the many unintentional marks of habit or condition that are recorded under stress of impulses too subtle to be recognized in their operation. Thus while one is writing his letter, he is also creating a running commentary upon his own life and condition. Whatever may be said of the value of such a commentary for ordinary purposes, its legibility to the careful student is guaranteed by the immutable relation of cause to effect. Yet who can trace such effects back toward their causes with more hope of success than the expert in physiology or mental science? The handwriting which to the layman may indicate mere illiteracy, may to the physician divulge incipient palsy or insanity.

Again, from the standpoint of general utility it would seem that a clear appreciation, at once of the value and the imperfections, of human testimony is hardly less important to the doctor than the lawyer. I suppose that the diagnosis of many important medical cases must depend largely upon facts which come to the physician through the medium of some other person's observation. I suppose that, of the mass of facts

and conclusions which constitute his professional education, a very large proportion must depend for their value upon the accuracy of some predecessor's power of identification—for it is to be remembered that classification, the very backbone of modern science, is in its operation, but identification—the identification of an individual with a class.

The identification of a human being, however, seems to be an operation to the performance of which every one believes himself peculiarly adapted. Almost anybody will on reflection admit that he does not know much about himself, but he will be found pretty strongly of the opinion that he knows all about his neighbor. The belief in our ability in this direction leads us to doubt whether anybody ever was actually, honestly and persistently mistaken in such a matter, and this feeling is strengthened by the fact that very few cases of mistaken identity have been of sufficient importance to cause them to be preserved. If, however, anybody desires to settle for himself the possibility of such an error, he might read a few volumes of the evidence in the Tichborne case, including the testimony of Lady Tichborne as to the identity of Arthur Orton and her own son.

There are several cases reported in the various works on Medical Jurisprudence with which most of you are doubtless familiar. In Beck's work a trial for bigamy is reported as having taken place in New York in 1804, in which a man was tried under the name of Thomas Hoag, but who insisted that he was in fact Joseph Parker, and an entirely different man. Many witnesses testified to their belief that the prisoner was Thomas Hoag, whom they had known. It was in evidence also that Thomas Hoag had a slight lisp and had a small scar upon his forehead. These were both found to exist to some extent with the prisoner. It was further proven that Thomas Hoag had a large scar upon the sole of his foot, caused by having stepped upon a drawing knife.

Upon examination of the prisoner's foot there was no evidence of such a scar. He was therefore acquitted, escaping, as it were, by the skin of his *foot*.

Before taking up the present case I wish to call your attention to a feature of corroborative evidence that is most strongly brought out in this class of investigations. It is as to the value of a combination of trivial facts, or, if we may use the expression, of a compound fact, made up of minor facts which considered severally would possess but little value. We are very apt to dispose of small bits of evidence when they are presented to us singly without weighing their real value as considered in relation to other existing facts. A little reflection will show that this method is not always rational. A most practical illustration of my meaning is given in a work published a few years since in London, and entitled "The handwriting of Junius professionally investigated." Mr. Chabot, an expert in handwriting, undertook the comparative examination of the handwriting of the Junius Letters with the handwritings of Sir Philip Francis and other suspected persons, with the view to the formation of an opinion as to the identity of the author. One of the many lines of his investigation consisted in the comparison of the form adopted by the two writers in dating their letters. One of the Junius letters was dated thus: "London. 2:^d January. 1768." Disregarding the handwriting, strictly speaking—that is, the formation of the letters—Mr. Chabot turned his attention to what he called the "habits of writing." He selected nine characteristics of the above form for the purpose of comparison. Most of these nine points are of such common occurrence that they cannot properly be called *peculiarities*. The first is, that the whole date, etc., is written at the beginning, and not at the end of the letter, as is sometimes done: the *second* is, that it is all written upon one line, etc. Several of the points, however, relate to the punctuation, which certainly has a somewhat singular

appearance to us of the nineteenth century. But even as to this we must remember that the use of the period and colon were then much more common than at present. With us, the comma—which for general all-round utility has no rival in modern usage, excepting, perhaps, the hair pin—has displaced the more dignified punctuation marks. Mr. Chabot compared this form, used by Junius, with forty-four specimens written by Sir Philip Francis. In forty of the Francis letters he found an exact agreement as to the particulars selected, and in the other four letters he found only one of the characteristics missing. The fact for which I have given the illustration is this: There is not one of these nine characteristics which might not have been swept aside as of no evidential value, if it stood alone. It might easily be found to co-exist in the letters of many different persons. Yet treating them altogether as a compound fact, their weight was demonstrated by Mr. Chabot as follows: He compared the same form used by Junius with a large number of manuscript letters which had been preserved in the British Museum. These had been written during the same general period of time covered by the Junius and Francis letters, and were therefore presumably moulded by the same general customs and habits. Among more than fifteen hundred specimens thus examined he did not find one which agreed in all of the nine particulars with the Junius and Francis letters; in other words, such a combination of commonplace characteristics as appears in those datings was not duplicated by accident once out of fifteen hundred chances.

Nor is the suggestive value of Mr. Chabot's experiment confined to matters of handwriting or to any other special class of facts. If two gentlemen, in conversation with each other, learn that they are each acquainted with a person whose residence is on the south side of Walnut Street between Tenth and Eleventh Streets, they would not from this alone infer that their acquaintances

were in fact the same person. If they further ascertained that the name of the acquaintance to whom each had referred was Smith, they would not from that fact alone infer identity. But it would be illogical for them to consider the matter of the name alone under such circumstances; they would instinctively add to the last fact the information they had before received; namely, that the two persons resided in the same immediate locality, and a suggestion of identity would arise, to be dispelled or affirmed upon further investigation. I have called your attention to this principle because it seems to be the key to all investigations of this class, where no single fact of conclusive value is attainable.

Now as to the case in hand. To avoid unnecessary confusion I shall confine my statement to such of its facts as come directly within the line of my subject. This will reduce to mere outline, what might have been stated as a narrative very complete in detail. The following are the facts which are of interest in view of the testimony:—

John Andrew Mason died in the city of Sacramento, California, on the 11th day of July, 1876. The immediate cause of his death was consumption, he having long suffered from weak lungs, the result of some early disease. It was a matter of public knowledge that he had lived in Sacramento for a period of at least twenty-two years immediately before his death, and he was well known in local business and political circles. During most, if not all, of his residence in that city he had been engaged in the business of wagon and carriage making. He was at the time of his death a member of the Board of Supervisors—the body which had the management of the County government—and throughout this paper I shall, for the sake of clearness, refer to him as *Supervisor* Mason. Probably no man was better known in the community in which he resided than he; but it is to be remembered that in the then social condition of California a man might be personally quite well known without any one

having much knowledge of his family history. Many of the first generation of white residents came to California single-handed, leaving their family antecedents in the obscurity of their then far-distant homes. Under such circumstances there was room for much doubt and confusion upon points which in older communities would have been within the common knowledge of all.

Within a few months after the death of Supervisor Mason, a lady called upon me at my office in Sacramento, and desired to retain me to represent herself and two daughters in the presentation and establishment of their rights as respectively the widow and children of the deceased Supervisor. In listening to her story, I soon saw that it was in direct and irreconcilable conflict with the reputed facts of family history as accepted by Supervisor Mason's acquaintances in Sacramento. Among other discrepancies, there were two young men residing with Mr. Mason at the time of his death, who were acknowledged and accepted as his sons. Their ages were such as to preclude that relationship to him if my client's claim were well founded. These circumstances, together with the further knowledge that the estate was worth about \$40,000, most of which would, under the laws of California, have come to the successful claimant, made me somewhat conservative in the first instance. The simple and straightforward appearance and manner of the narrator, however, created a confidence in her honesty, which confidence was, I think, rather strengthened by the fact that her story was weak upon one or two points where she could have easily made it strong. For example, she stated that her husband's name was John A. Mason, but that she did not know his middle name. In the same interview, however, I learned that she did know that Supervisor Mason's middle name was Andrew, and I could see nothing save honesty that should have prevented her from adding this important item to the description of her own husband. She was of German birth,

had married Mr. Mason when she was not familiar with our language, and said that he had never, to her knowledge, used the name in his signature, nor had any other circumstance impressed it upon her mind.

It was then twenty-five years since she had seen him, and while she had doubtless heard the name during their residence together, it had entirely passed from her mind.

Finally, I undertook the investigation of the case, with the reservation that, if at any time I felt satisfied that we were mistaken, I could abandon it without further reason. After entering into the matter I became interested, and proceeded with it to trial, which took place July 2d, 1878, nearly two years after the death of Supervisor Mason. The verdict was adverse to my client, and, in view of the rule of law which threw upon her the burden of proof in such a contest, and the character of the evidence upon the other side, I cannot complain of the decision.

During the time that the case was in preparation, I corresponded with pretty much every man on the Pacific Coast who had ever been so unfortunate as to know a man named John Mason. I remember one correspondent who replied that he had never known the Mason whom I sought, but that he knew a great deal about the Masonic order generally, which information was at my command if I desired it.

The evidence in the case was quite voluminous, the testimony of Mrs. Mason herself making a pamphlet of forty-four pages. Her story was entirely uncontradicted upon any point other than the identity of the man whom she married with Supervisor Mason, the deceased. Her narrative was incidentally corroborated upon many points, but it would be useless to give the corroborative testimony upon any of the points other than the one of identity. She testified: "I was born in New Castle, Hesse, on the 11th day of October, 1819, and came to the United States when about 14 years of age; on the 27th day of September, A. D. 1841, at Buf-

falo, N. Y., I was married to John A. Mason; the ceremony was performed by Rev. Frederick Kreckler, in the residence of my stepfather, in the presence of a considerable number of people. I have the certificate of the minister"—which she produced on the trial. "Myself and husband went from Buffalo to Rushville, Ill., within a few days after our marriage; we remained at Rushville until 1846 when we removed to Pittsfield, also in the State of Illinois; here we remained until May, 1850, except for about one year, when we lived at Rockport, ten miles from Pittsfield, but my husband was frequently absent for two or three weeks at a time upon business trips; at Rushville my husband learned the wagon-making business with a Captain Patterson; this business he afterward carried on at Rushville and Pittsfield, having three successive partners, named respectively Kurtz, Welsh, and Hogoboom." On the first day of May, 1850, her husband left Pittsfield with a party bound across the plains to California. As to the immediate cause of her husband's journey, Mrs. Mason testified: "He had been very sick the last winter in Pittsfield with inflammation of the lungs; he had a similar attack the previous winter; he had a bad cough; it was on account of the lung troubles that the doctor advised him to go to California." The husband and wife were on good terms with each other, and Mrs. Mason had several letters which she had received from him during his journey and after his arrival in California; the last letter that she ever received from him was dated June 27th, 1853; she received some indirect information at about the same date from some returned gold hunter, who had met her husband in one of the mining camps; from this time her husband disappeared from her knowledge. She remained in Pittsfield a quarter of a century after her husband's departure, and brought up and educated their two daughters. One of these married and removed to California some time about 1873, and in 1875 Mrs. Mason came to live with her daughter, in the southern part of

that State; she did not visit Sacramento to stay at any time during the life of Supervisor Mason, and never saw him. The published accounts of his death led her to investigate the matter and to visit Sacramento for that purpose. Her opinion as to his identity with her husband, as far as that opinion turned upon personal resemblance, was the result of her examination of the photograph which we have before us this evening.

The evidence on the question of identity reduced to its smallest limits is as follows, bearing always in mind that when I speak of "*John A. Mason*" I mean the person who undoubtedly married the claimant at Buffalo in 1841, and when I speak of "*Supervisor Mason*" I refer to the man who died at Sacramento in 1876.

Mrs. Mason testified to the general facts which I have already given, and which were not disputed at any stage of the case. As to the likeness, she said: "After all allowances for such changes as time would naturally produce, and observing the whole expression of the countenance, and the hair, eyes, nose and forehead, I became deeply impressed that it was the picture of my husband."

Thomas J. Baker testified: "I knew John A. Mason in Illinois; first met him at Quincy, in that State, in 1847: do not know whether he then resided at Pittsfield or Rockport; we roomed together a few days at Quincy; saw him again in 1849; next met him in June, 1850, on the plains coming to California; we traveled together from Lincoln, Neb., to Hangtown, Cal., where we arrived in August, 1850; we separated there; I next saw him at Drytown in November, 1850, and next in Sacramento City in June, 1852; saw him again in Sacramento in March, 1853. We each time recognized each other and talked of our trip across the plains. During our trip to California, Mason spoke of his having a family—a wife and two daughters—in Pittsfield, Pike County, Ill.; when I met him at

Drytown he had been mining." [Witness is here handed a photograph of Supervisor Mason, which is admitted by both parties to be an accurate likeness of the deceased.] Witness, after examining the likeness, continues: "I have very little doubt, in fact none, that this picture represents the man, John A. Mason, of whom I have been testifying."

Dr. James K. Freeman testified: "I lived in Sacramento from 1850 until the fall of 1852; knew John A. Mason here; first met him late in 1850; saw him frequently; this picture of Supervisor Mason seems to be a fac-simile of the man I knew; late in 1852 I returned to Illinois; Mason often spoke of having a family, I think in Pike County, Illinois; he gave me a letter to deliver to a gentleman named Bagby, near Pittsfield; Bagby and I talked of Mason, and I supposed his family lived near there; I never saw Mason afterward."

J. C. Hoy testified: "I resided in Sacramento, on and off, between 1851 and 1862; knew John A. Mason here in 1851; he was in the business of wagon-making and blacksmithing in 1852; I was teaming; I bought a wagon from him in August, 1852; he said he had a wife and two children in Pike County, Illinois; last saw him in April, 1862;" [shown photograph of Supervisor Mason] and continued, "This photograph represents the person I refer to;" and again, the witness said further on, "I have no doubt but that this picture is that of the Mason I knew." The three witnesses just quoted from were strangers in Sacramento at the date of the trial, and I had caused to be taken and offered in evidence the depositions of the State Senator and county officers from the places of their residence; these all testified that they had known the witnesses for many years, and that their reputation for truth and honesty was good in the community in which they had resided.

Strother Grigsby, the County Judge of Pike County, Ill., and *Scott Wike*, the Congressman from that district, testified by de-

position to the good character of Mrs. Mason and to her long residence in that place; neither of them had known her husband.

G. D. Foot testified by deposition: "Reside near Pittsfield, Ill.; have lived there thirty-three years;" [is shown a photograph of Supervisor Mason, which was annexed to and made part of his deposition.] "Recognize in this picture a strong resemblance to the Mason I knew in Pittsfield; knew him about four or five years; he had worked for me; last saw him the day before he left for California in the latter part of April, 1850; received letters from him from there."

Thomas Dickson testified by deposition: "I knew Mason at Pittsfield and in California; he left Pittsfield in 1850; I saw him on the plains, at the Carson river, on the way out; last saw him at Coloma, Cal.; recognize this as the photograph of the man to whom I refer."

D. Bates and *D. C. Bates*, his son, testified by deposition that they resided at Pittsfield, and had known John A. Mason of that place; that he had been a wagon maker while there; that they recognized the photograph of Supervisor Mason [which was made a part of their deposition] as a likeness of the John A. Mason to whom they had referred.

Robert Southwell, of Winchester, Ill., testified by deposition that he had resided in California in 1850, and as follows: "I became acquainted with John A. Mason in the fall of 1850, at a place called Mormon Gulch, in Calaveras County, Cal.; heard Mason say that he did not expect to return to his family; this photograph of Supervisor Mason is a likeness of the John A. Mason whom I then knew; there was a man named John Hart with us at Mormon Gulch; Hart now resides near Winchester, Ill." In connection with the testimony of this witness, one of the letters received by Mrs. Mason from her husband, dated November 17th, 1850, was offered in evidence. It stated, among other things, that he had saved up a hundred dollars in gold dust, which he would have sent

home had opportunity offered; as to the possibility of such a chance the letter contained this language: "I think in January I may have a chance by a man named Robert Southwell, of Winchester, but the risk is bad on account of the cholera."

John Hart testified by deposition: "I was in the mines in California with Mason and Robert Southwell; I remained with Mason after Southwell went back to Illinois; when Mason left me, it was with the intention of going directly to Sacramento; this photograph of Supervisor Mason represents the Mason to whom I refer, or his exact counterpart."

The foregoing was all of the evidence of living witnesses upon the point of identity.

As I have said, Mrs. Mason had preserved some of the letters received by herself from her missing husband, and I undertook a comparison of the handwriting with that of Supervisor Mason. The latest date that I could procure of John A. Mason's was "June 27th, 1853," and the earliest specimen that I obtained of Supervisor Mason's handwriting was 1860—leaving a gap of seven years. The two were submitted to Mr. Miller, the cashier of D. O. Mill's bank, the only person in Sacramento who had paid any attention to the subject of comparison of handwriting, and he reported that he found many resemblances, but that the difference in the dates was such that he would not give an opinion as to the identity of the writer.

Afterward I undertook to make an examination for myself. From the admitted letters of John A. Mason, my client's husband, I selected such points in the handwriting as seemed to me to amount to peculiarities (particularly his capital letters), and examined such writings of Supervisor Mason as were attainable, to discover, if possible, the existence of the same characteristics. I have preserved some of the results, which are fair samples of all. At the date of Supervisor Mason's death his usual signature was made as follows: "J. A. Mason," with a "J" that dropped at least half of its length below the

line upon which he was writing; the initial "A" for his middle name was simply the round *a* or the small letter enlarged without other change of form. The signature of John A. Mason, in his last letter to his wife, was made as follows: "J. A. Mason," with the "J" entirely above the line, and with an initial "A" pointed at the top—a true capital.

By obtaining access to the old assessment lists, which were put together in alphabetical bundles and stowed away in the basement of the Assessor's office, I found Supervisor Mason's sworn signature for several years back. Between 1860 and 1865 I found that he had occasionally made the capital J of his signature entirely above the line, thus approaching in a general way the signature of John A. Mason in that respect. His capital A also underwent a change as my examination extended toward the earlier years, and in 1860 I found it written very much like the capital of John A. Mason. His method did not seem to be at all settled at that period; he sometimes used the one form and sometimes the other. Certain other of the letters as written by J. A. Mason seemed sufficiently peculiar to warrant a search for their counterpart. His capital R was made with an apparent care to bring the turn or loop accurately around the upright stem.

This habit I found to exist in the writing of S. M. at all periods of which I gained any knowledge.

The small "o" of J. A. M.'s letters where it appeared at the beginning of a word was made by commencing at a point a little below the centre and running a line up to the ordinary point of beginning. This seemed like a genuine peculiarity—a habit that would not be the result of haste or negligence in writing.

Perhaps the most marked peculiarity was in the manner in which the capital D was made. J. A. M. commenced this letter with an unnecessary up stroke, which carried him to the ordinary place of beginning. In a

report written by Supervisor Mason to the Board of Supervisors, several years before his death, I found this letter having the same peculiarity. There were several such letters in his writings, but it was not by any means his uniform habit in this respect. The example that I had photographed was the most marked in its construction.

This constituted the case on behalf of the claimant, and, as I have said, was overcome by the evidence on behalf of the defendants. The witnesses examined by deposition were Mrs. Ann Thompson, who testified that John Andrew Mason, who died in Sacramento, was the only son of herself and her former husband, Daniel Mason; that he was born in Boston and never left that city to be absent more than a month or so, until 1848; that on January 24th, 1844, he married Sarah Lovett, of Boston, by whom he had two sons, John, Jr., and Daniel, who were both in California with him; that his wife died; that he (Mason) left New York for California in December, 1853, going by water and across the Isthmus of Panama; that she had corresponded with him with reasonable regularity ever since, and attached some of the letters to the deposition. This was corroborated by the testimony of Alexander Lovett, his father-in-law; Augusta Nelson, his step-sister; Eliza J. Stephenson, Lizzie Marden, and Lucinda Robertson, sisters-in-law, and many others. A Mr. Wormer, of Sacramento City, testified that he was a fellow passenger with Supervisor Mason on his trip to California, and gave a detailed account of the voyage, including a description of an accident which happened to their vessel, by means of which they were obliged to run into San Diego in a storm to avoid being wrecked, and were afterward taken to San Francisco in another boat. He had kept up his acquaintance with Mason ever since their arrival in California. A singular coincidence was the fact that I myself was on the vessel described by Mr. Wormer at the time of the wreck, having gone to California in charge of my parents at the age

of two years. While I had, of course, no personal recollection of circumstances testified to by Mr. Wormer, they had, nevertheless, been related to me so often that they had long seemed part of my conscious experience. Upon this testimony the verdict was for the defendant, and established the fact that the husband of the claimant was not Supervisor Mason who died in Sacramento in 1876.

Now, dismissing any doubts, and assuming that there were two individuals, let us, in conclusion, see what condition of facts were developed by the evidence.

First. There was practical identity of name. There were two John A. Masons.

Second. There was such a degree of personal resemblance between the two individuals as to lead the wife and many of the acquaintances of the one to recognize in the photograph of the stranger the likeness of the husband and friend.

Third. Identity of business, for beyond dispute both were wagon makers.

Fourth. The co-existence of a similar diseased condition of the lungs.

Fifth. The resemblance, such as it was, in the handwriting of the two persons.

Sixth. A peculiar and very deceptive coincidence as to time and locality. From the evidence of Baker, Freeman, Hoy and Hart, it seems certain that from 1850 to 1853 John A. Mason was much in Sacramento, and unless Hoy was entirely mistaken, he (Mason) was conducting a wagon-making and blacksmithing business at that place during a portion of 1852, for he (Hoy) swore that in August of that year he purchased a wagon of him. Hoy further swore that he saw John A. Mason in Sacramento as late as 1862, but I have always believed that the person whom he saw at that time was Supervisor Mason. My recollection is that Hoy was only passing through Sacramento at that time on his way to some other place, and it is likely that he saw some one whom he thought he had known, and upon being told that it was John Mason, jumped to the conclusion that it was

his former acquaintance. This is, of course, only conjecture, but from no other source than Hoy could I learn of John A. Mason later than 1854.

The result of the evidence, stripped of all conjecture, was that the thread of John A. Mason's life was finally lost in 1853 or 1854, and at about the same time another man, bearing the same name, conducting a similar business, bearing a considerable personal re-

semblance, suffering to some extent from a similar disease, and writing a somewhat similar hand, appears at the same place and lived out the rest of a reasonably long life.

The facts which I have given were reported at length in the local papers at the time, copies of which are still in my possession. The case may at least make us hesitate in reaching important conclusions without hearing both sides of any controversy.

[Illustrations of the peculiarities and resemblances between the handwriting of John A. Mason and Supervisor Mason were shown, by means of the stereopticon.]

